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**DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration**

49 CFR Part 580

[Docket No. NHTSA-2012-0122; Notice 1]

**Petition for Approval of Alternate
Odometer Disclosure Requirements**

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of initial determination.

SUMMARY: The State of Arizona has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA initially denies Arizona's petition. This notice is not a final agency action.

DATES: Comments are due no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA-2012-0122] by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- Fax: 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Kerry Kolodziej, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-5263) (Fax: 202-366-3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act),¹ as amended by the Truth in Mileage Act of 1986 (TIMA),² contains a number of provisions to limit odometer fraud and ensure that

¹ Sec. 401-13, Pub. L. 92-513, 86 Stat. 961-63.

² Sec. 1-3, Pub. L. 99-579, 100 Stat. 3309.

the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Federal law also contains document retention requirements for odometer disclosure statements.

TIMA's motor vehicle mileage disclosure requirements apply in a State unless the State has alternate requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. Therefore, a State may petition NHTSA for approval of such alternate odometer disclosure requirements. 49 CFR 580.11 governs petitions for approval of alternate disclosure requirements.

Seeking to implement an electronic odometer disclosure submittal process for licensed dealers, the State of Arizona petitions for approval of alternate odometer disclosure requirements.

As discussed below, NHTSA's initial assessment is that Arizona's petition does not satisfy the requirements for a petition for approval of alternate disclosure requirements as set forth at 49 CFR 580.11(b), and that Arizona's proposed alternate odometer disclosure requirements are not consistent with the purpose of the disclosure

required by Federal odometer law. For these reasons, as explained below, NHTSA preliminarily denies Arizona's petition.

II. Statutory Background and Purposes

A. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration of petitions for approval of alternate odometer disclosure requirements by Virginia, Texas, Wisconsin, Florida, and New York. See 74 FR 643, Jan. 7, 2009 (granting Virginia's petition); 75 FR 20925, Apr. 22, 2010 (granting Texas' petition); 76 FR 1367, Jan. 10, 2011 (granting Wisconsin's petition in part); 77 FR 36935, June 20, 2012 (granting Florida's petition in part, and denying Florida's petition in part); see also 76 FR 65485, Oct. 21, 2011 (initial determination denying New York's petition). The statutory background of the Cost Savings Act and TIMA, as related to odometer disclosure requirements, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used, is discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 643; see also 77 FR 36935; 76 FR 48101, Aug. 8, 2011 (addressing leased vehicles and powers of attorney).³ A brief summary of the statutory background of Federal odometer law follows.

In 1972, Congress enacted the Cost Savings Act to establish safeguards for consumers which prohibited odometer tampering. Among other things, the Cost Savings Act made it unlawful to alter an odometer's mileage, and required written disclosure of odometer mileage in connection with any transfer of ownership of a motor vehicle.⁴

³ Arizona's petition does not address leased vehicles or powers of attorney.

⁴ In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. See Pub. L. No. 94-364, 90 Stat. 981 (1976).

However, the Cost Savings Act had a number of shortcomings, which are discussed below.

In 1986, Congress enacted TIMA to address the Cost Savings Act's shortcomings. Congress was specifically concerned with addressing odometer fraud in the commercial market, and noted that used car auctions, distributors, wholesalers, dealers, and used car lots of new car dealers often may be directly involved in fraud.⁵ TIMA also added a provision to the Cost Savings Act, allowing States to obtain approval for alternate odometer disclosure requirements. Pursuant to Section 408(f) of the Cost Savings Act, as amended by TIMA: The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted, and recodified without substantive change. See Pub. L. No. 103-272, 108 Stat. 745, 1048-1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 et seq. Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA, with subsequent amendments, were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of State alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

⁵ S. Rep. No. 99-47, at 2 (1985), reprinted in 1986 U.S.C.C.A.N. 5620, 5621.

B. Statutory Purposes

In our final determinations, after notice and comment, granting the petitions for approval of alternate odometer disclosure requirements of Virginia, Texas, and, in part, Wisconsin and Florida, we identified the statutory purposes of TIMA.⁶ 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. These purposes are summarized below.

One purpose of TIMA was to ensure that the form of the odometer disclosure precluded odometer fraud. The Cost Savings Act did not require odometer disclosures to be made on a vehicle's title. This created a potential for odometer fraud, because a transferor could easily alter the odometer disclosure or provide a new statement with different mileage.⁷ TIMA addressed this shortcoming of the Cost Savings Act by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Titles also had to contain space for the seller's attested mileage disclosure.

A second purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title, and a requirement for the title issued by the State.⁸ This was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process.⁹ Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure.

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Prior to TIMA, titles could be printed through

⁶ Any statements which refer to the "purposes of TIMA" or a "purpose of TIMA" should be interpreted to refer to the purpose of the disclosure required by subsection (d) or (e), as the case may be, as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

⁷ See S. Rep. No. 99-47, at 2-3 (1985), reprinted in 1986 U.S.C.C.A.N. 5620, 5621-22; H. Rep. No. 99-833, at 33 (1986).

⁸ See S. Rep. No. 99-47, at 2-3 (1985), reprinted in 1986 U.S.C.C.A.N. 5620, 5621-22; H. Rep. No. 99-833, at 18, 32 (1986).

⁹ Sec. 2, Pub. L. No. 99-579, 100 Stat. 3309.

non-secure processes, and could be easily altered or laundered.¹⁰ To address this shortcoming of the Cost Savings Act, TIMA required titles to be printed by means of a secure printing process or protected by other secure processes.¹¹

A fourth purpose of TIMA was to create a record of the mileage on vehicles and a paper trail.¹² This would allow consumers to be better informed and provide a mechanism for tracing odometer tampering and prosecuting violators. Under the Cost Savings Act, prior to TIMA, odometer disclosures could be made on pieces of paper and did not have to be submitted with new title applications. TIMA required new applications for title to include the transferor's mileage disclosure statement on the title, creating a permanent record that could easily be checked by subsequent owners or law enforcement officials. This record would provide critical snapshots of the vehicle's mileage at every transfer, which are fundamental links in the paper trail.

Finally, the general purpose of TIMA was to protect consumers by ensuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures.¹³ The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

III. The Arizona Petition

Arizona seeks to implement an electronic odometer disclosure submittal process for licensed motor vehicle dealers, and petitions NHTSA for approval of alternate odometer disclosure requirements. The petition requests NHTSA to allow use of alternate odometer disclosure procedures in two situations.

¹⁰ See S. Rep. No. 99-47, at 3 (1985), reprinted in 1986 U.S.C.C.A.N. 5620, 5622.

¹¹ See H. Rep. No. 99-833, at 18, 33 (1986).

¹² See H. Rep. No. 99-833, at 18, 33 (1986).

¹³ See Sec. 1-3, Pub. L. 99-579, 100 Stat. 3309.

As background, according to information posted on the Arizona Department of Transportation (ADOT) website, there are over 700 new motor vehicle dealers licensed in Arizona and over 1,400 used motor vehicle dealers licensed in Arizona.¹⁴ The Arizona Automobile Dealers Association, which represents new car and truck franchised dealers, has over 250 members.¹⁵ The Arizona Independent Automobile Dealers Association, which calls itself the voice of the used motor vehicle industry and represents non-franchised motor vehicle dealers in Arizona, has 215 registered dealers.¹⁶

A. Arizona Law Regarding Dealers

Since Arizona's petition addresses the transfer of used motor vehicles to and from licensed Arizona dealers, we briefly describe certain aspects of Arizona law relevant to such transfers. Currently, pursuant to the Arizona Revised Statutes, a dealer shall not offer for sale or sell a used motor vehicle until the dealer has obtained a certificate of title to the motor vehicle.¹⁷ The Arizona Administrative Code further requires that the dealer's name shall be recorded on a title certificate as transferee or purchaser.¹⁸ A certificate of title in Arizona includes space for ownership change information, including an odometer mileage disclosure statement, and dealer reassignment information.¹⁹

Arizona's petition does not identify any proposed changes to applicable State law.

B. Arizona's Proposed Projects

Arizona proposes that licensed dealers meeting specified technical requirements would electronically scan and upload documents to ADOT, including documents used to

¹⁴ <http://www.azdot.gov/mvd/MotorVehicleDealers/LicensedDealers.asp> (Arizona Licensed Motor Vehicle Dealer Listing, June 2012).

¹⁵ <http://www.aada.com/>.

¹⁶ See <http://www.aiada.net/>.

¹⁷ Ariz. Rev. Stat. 28-4409(A)(2).

¹⁸ Ariz. Admin. Code R17-5-404

¹⁹ Ariz. Admin. Code R17-4-202(B).

make odometer disclosures, rather than mailing or hand-carrying the documents to ADOT. Based on this description, it is our understanding that Arizona's proposals would only apply to vehicles acquired by licensed Arizona dealers and sold to in-state buyers.

According to the petition, dealers would scan documents using a specified format and resolution, and would encrypt the scanned images. Dealers would transmit the images to ADOT through a secure system using account codes, user/group profiles, and passwords.²⁰ ADOT would have the ability to sanction participating dealers, including revoking their ability to electronically submit documents to ADOT. ADOT would retain electronic files in a document management system, and dealers would be required to retain hard copies of the documents submitted in accordance with retention periods specified by Federal and Arizona law.

Both of Arizona's proposed projects would utilize odometer disclosures made on a form described in the petition as a Secure Odometer Disclosure.²¹ An example of a completed Secure Odometer Disclosure form is attached to Arizona's petition. The example form includes ADOT identifying information in the upper left-hand corner and indicates that it is void if altered or erased. Arizona's petition describes the form as using a watermark displaying the word VOID when scanned. This feature is visible on the example provided; the word VOID appears repeatedly across the entire form. The form does not have any unique identifier, such as a serial number.

The top section of the proposed Secure Odometer Disclosure form includes spaces for Vehicle Identification Number (VIN), Year, Make, Body Style, Buyer Name,

²⁰ The petition does not describe whether employees of a dealer would share information to access the ADOT system or whether each employee of a dealer would have unique access information, so that a submission could be traced to a specific individual.

²¹ We note that, based on the example form, a Secure Odometer Disclosure would be used solely for the purpose of making an odometer disclosure. It would not transfer ownership of a vehicle.

and Title Number. The form also appears to include a space for Sale Date; however, the example attached to Arizona's petition is completed with the sale state (AZ) in that space.

The next section of the Secure Odometer Disclosure form includes the following statement: "Federal and State law require that the seller states the mileage in connection with the transfer of ownership. Failure to complete the odometer statement, or providing a false statement, may result in fines and/or imprisonment." Below that statement is a space for Odometer Reading and boxes to check to indicate whether the odometer reading is in miles or kilometers. There is also a box to check to indicate "Mileage in excess of odometer mechanical limits," and a box to check to indicate "NOT Actual Mileage, WARNING – ODOMETER DISCREPANCY." Below, the form states: "I certify to the best of my knowledge that the odometer reading is the actual mileage unless one of the boxes above is checked."

The following section of the Secure Odometer Disclosure form includes spaces for Seller/Dealership name (printed), Dealer Number, Street Address, City, State, Zip, Agent Name, and Seller/Agent Signature.

At the bottom of the Secure Odometer Disclosure form is the following statement: "I am aware of the above odometer certification made by the seller." This statement is followed by spaces for Buyer Name (printed) and Buyer Signature.

The Secure Odometer Disclosure form would be completed and signed by hand. A licensed automobile dealer would scan and electronically submit the completed Secure Odometer Disclosure form, along with other documents as described below, to ADOT.

1. Project One

For purposes of the first project addressed by the petition (Project One), Arizona seeks to institute alternate odometer disclosure requirements for a trade in or sale of a used vehicle to a licensed dealer when there is no paper title²² and the vehicle is subject to electronic lien(s).

According to the petition, the transferor would make an odometer disclosure to the dealer on a Secure Odometer Disclosure form, signed by both parties. The dealer would then apply for a title in its own name by scanning and electronically submitting a title application, Secure Odometer Disclosure form, and other supporting documents to ADOT.

The petition specifies that the dealer would make an odometer disclosure on the title at the time it resells the vehicle. Petition at p. 2. While this indicates that ADOT would send the dealer a new paper title after the transfer of the vehicle to the dealer is complete, another portion of the petition describing the process states that the selling dealer would make an odometer disclosure on a Secure Odometer Disclosure form. Petition at p. 3. According to this portion of the petition, the dealer would then scan and electronically submit the completed Secure Odometer Disclosure form and other supporting documents to ADOT.²³ The petition appears to propose that the dealer would

²² It appears that there is an electronic title. The petition describes Arizona as having state laws designed to facilitate a nearly paperless vehicle title system, but does not provide copies of, cite to, or otherwise describe those laws.

²³ The purpose of this submission is not clear from the petition. Unlike the submission following the initial transaction in Project One (the transfer of a vehicle to the dealer), the petition does not specify that the dealer would submit a title application along with the Secure Odometer Disclosure form.

scan and electronically submit a Secure Odometer Disclosure, but not the title, to ADOT following the dealer's sale of the vehicle.²⁴

The dealer would retain the original Secure Odometer Disclosure forms for the retention periods specified by Federal and Arizona law.

2. Project Two

Arizona's petition also describes a second project (Project Two), for which it seeks alternate odometer disclosure requirements. Project Two would apply to a licensed dealer's sale of a used motor vehicle that had a paper title at the time it was transferred (traded in or sold) to a licensed dealer.

The petition states that the vehicle would be resold by a dealer using the paper title from the transferor. It appears, based on this description and the requirements of Arizona law that a dealer's name shall be recorded on a title certificate as transferee or purchaser and that a title include space for dealer reassignment information, that the dealer would make an odometer disclosure on the paper title at the time it resells the vehicle.²⁵ However, the petition also specifies that if the dealer applies for a new title in the name of the vehicle purchaser, the dealer and purchaser would complete a Secure Odometer Disclosure form. The dealer would then scan and electronically submit a title application, the paper title,²⁶ the Secure Odometer Disclosure form, and supporting documents to ADOT. The dealer would retain the original documents (including the original paper title) for the retention periods specified by Federal and Arizona law.

According to the petition, a new title would be sent to the buyer if there is no lien on the

²⁴ This is unlike the petition's description of the dealer's electronic submission to ADOT for purposes of Project Two, discussed below.

²⁵ Arizona's petition is not detailed and at points is not clear. To the extent our reading of the petition is inconsistent with Arizona's intent, we invite Arizona to clarify its proposals in comments.

²⁶ It appears that the dealer would be required to submit scans of both the front and back of the paper title.

vehicle. If there is a lien, both the lien and the title would be maintained as electronic records by ADOT.

C. Arizona's Position on Meeting the Statutory Purposes

Arizona's petition asserts that its proposals are consistent with the purposes of Federal odometer law and regulations.²⁷ Arizona identifies the purposes of Chapter 327 of Title 49 as a whole. Specifically, those purposes are to prohibit tampering with motor vehicle odometers, and to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers. 49 U.S.C. 32701(b). Arizona also identifies the purposes of Federal regulations pertaining to odometer disclosure requirements, as set forth at 49 CFR 580.2. Those purposes, other than for leased vehicles, are to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title, and to preserve records that are needed for the proper investigation of possible violations of the Cost Savings Act and any subsequent prosecutorial, adjudicative, or other action.

Arizona asserts that its proposed projects support the enforcement of Federal odometer law by ensuring that a Secure Odometer Disclosure form is submitted and transmitted electronically by a dealer to a certified ADOT processor. Arizona also states that a watermark displaying the word VOID across the Secure Odometer Disclosure form when scanned will serve as a secure measure to submission of a fraudulent form. Arizona

²⁷ As discussed above, pursuant to Section 408 of the Cost Savings Act, as amended by TIMA: The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

also asserts that the processes it proposes will offer greater protections against potential odometer fraud than does 49 CFR Part 580.

IV. Analysis

A. Requirements for a Petition under 49 CFR 580.11(b)

As a preliminary matter, NHTSA's initial determination is that Arizona's petition does not satisfy the requirements for a petition for approval of alternate disclosure requirements, set forth in 49 CFR 580.11(b).

First, the petition does not set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation, as required by 49 CFR 580.11(b)(3). We reviewed Arizona law and discussed relevant provisions above.²⁸ The petition states that Arizona is requesting to change the manner in which documents are submitted to and maintained by the State, and not the manner in which odometer disclosures are made.²⁹ However, we found no reference to a Secure Odometer Disclosure in the Arizona Revised Statutes or Arizona Administrative Code.

Second, Arizona's petition does not adequately demonstrate that the State motor vehicle requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act. See 49 CFR 580.11(b)(4). As noted above, Section 408(f) of the Cost Savings Act, as added by TIMA, states in pertinent part that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the

²⁸ To the extent Arizona believes additional provisions (including any proposed new provisions) are relevant, we invite Arizona to set forth and include a copy of such provisions in comments.

²⁹ The petition asserts that, under both of the proposed projects, all required odometer disclosures will continue to be made in the manner required by 49 CFR Part 580. We note that this assertion is illogical; if all required odometer disclosures will be made in the manner required by 49 CFR Part 580 then Arizona has no need to petition for approval of alternate disclosure requirements.

purpose of the disclosure required by subsection (d) or (e), as the case may be.³⁰ The petition includes a very limited discussion of how, according to Arizona, its proposals are consistent with the statutory purposes of Section 408(d).³¹ The petition specifically describes the proposed method of electronically submitting a Secure Odometer Disclosure form to ADOT and the use of a watermark as supporting the purposes of the law. However, Arizona's petition does not specifically address the purposes of Section 408(d) of the Cost Savings Act, even though NHTSA had specifically addressed this in prior Federal Register notices. Arizona also does not explain how use of a Secure Odometer Disclosure form to make an odometer disclosure is consistent with the relevant purposes.

B. Arizona's Proposal in Light of TIMA's Purposes

In view of the initial, non-final, nature of our assessment of whether Arizona's petition meets the requirements for a petition, we now proceed to our initial assessment of whether Arizona's proposed projects satisfy TIMA's purposes. We address Arizona's two proposed projects in turn.

1. Project One

NHTSA has initially determined that Project One would not satisfy the first purpose of TIMA, to ensure that the form of the odometer disclosure precludes odometer fraud. TIMA addressed the potential for fraud by requiring mileage disclosures to be on a

³⁰ We note that the statute predicates approval of alternate motor vehicle mileage disclosure requirements submitted by a State on their consistency with the purpose of the statutory disclosure requirements. Most States that have petitioned for approval of alternate odometer disclosure requirement have specifically addressed the purposes of TIMA related to the disclosure requirements, as set forth above. See 76 FR 1367; 76 FR 65485; 77 FR 36935. Instead of addressing the purpose of the statutory disclosure requirements, Arizona instead addressed the broader, overall purposes of Federal odometer law (which originate from Section 401 of the 1972 law) and the purposes of Federal odometer regulations.

³¹ We do not address Section 408(e), which concerned leased motor vehicles, because Arizona's petition does not address leased motor vehicles.

vehicle's title instead of a separate document. Project One is inconsistent with this purpose because it proposes using a Secure Odometer Disclosure form, separate³² from the vehicle's title, to make an odometer disclosure. First, a transferor would use a Secure Odometer Disclosure form to make an odometer disclosure upon trading in or selling the vehicle to a dealer.³³ Second, a dealer, who had obtained title in its own name for the vehicle, would apparently make an odometer disclosure on a Secure Odometer Disclosure at the time it resells the vehicle.³⁴ An unscrupulous person could discard a Secure Odometer Disclosure form signed by both parties and create another Secure Odometer Disclosure form bearing an inaccurate odometer disclosure prior to submitting it to ADOT.

NHTSA has also initially determined that Project One does not satisfy the second purpose of TIMA, to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. There is no such requirement in Project One. Instead, Project One would allow a dealer to apply for and obtain a title in its own name by electronically transmitting a Secure Odometer Disclosure form, separate from the vehicle's title, to ADOT.³⁵

³² NHTSA has approved petitions establishing a process for an odometer disclosure to be directly linked to a vehicle's title using a secure process involving both parties. See 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. In such cases, the odometer disclosure is not separate from the title.

³³ We note that Project One addresses vehicles subject to liens. In amendments to TIMA pertaining to titles in the possession of a lienholder when the transferor transfers ownership of the vehicles, Congress maintained the requirement that the disclosure be on the title itself. It did provide for the use of a secure power of attorney under restrictive conditions, as an exception to the prohibition that a person may not sign an odometer disclosure statement as both the transferor and transferee.

³⁴ The petition also specifies that the dealer would make an odometer disclosure on the title. Arizona does not explain why the dealer also apparently would make an odometer disclosure on a separate Secure Odometer Disclosure form.

³⁵ Project One also proposes that a dealer would electronically submit a Secure Odometer Disclosure to ADOT following its subsequent resale of the vehicle, but it is unclear from the petition whether this submission is for the purpose of a title application.

NHTSA has also initially determined that Project One also does not satisfy the third purpose of TIMA, which is to prevent alterations of odometer disclosures on titles and to preclude counterfeit titles through secure processes. Project One would make odometer disclosures on Secure Odometer Disclosure forms, which are susceptible to substitutions, alterations, and/or forgery. Arizona's petition states that the use of a watermark on the Secure Odometer Disclosure form and security features in dealers' electronic submissions to ADOT provide sufficient levels of security. However, Arizona has not shown how the watermark would prevent submission of a fraudulent form, as the petition claims. According to the petition, the word VOID is displayed after the form is scanned. Since, in proposed Project One, a dealer is required to scan the form to submit it to ADOT, Secure Odometer Disclosure forms received by ADOT would appear as VOID. Arizona has not explained how ADOT would distinguish between an altered form that read VOID prior to being scanned, and a legitimate form that read VOID after being scanned.³⁶ Moreover, dealers would have access to blank forms bearing the watermark, which could be used by an unscrupulous person to create a new, fraudulent form prior to submitting it to ADOT, as discussed above.

NHTSA has initially determined that Project One also does not satisfy the fourth purpose of TIMA, to create a record of the mileage on vehicles and a paper trail. Project One would not create a scheme of records equivalent to the paper trail required by law. The mileage recorded in an odometer disclosure establishes a critical benchmark for evaluating the remaining mileage declarations that will follow. NHTSA has initially determined that Project One's proposed use of a Secure Odometer Disclosure form would

³⁶ The placement of the word VOID repeatedly across the Secure Odometer Disclosure form also obscures the writing on the form, and may make the disclosure difficult to read once scanned.

not create records and a paper trail consistent with this purpose of TIMA because the form is separate from the vehicle's title and, as discussed above, a person could create and submit a fraudulent form. ADOT has no means of ensuring that the form submitted was actually signed by the seller and the buyer.³⁷ Thus, the benchmark for evaluating mileage declarations that follow would be lacking, and there would not be a clear record and paper trail as contemplated by TIMA.

The information disclosed in a proposed Secure Odometer Disclosure form also creates an inadequate paper trail. Based on the example provided by Arizona, as described in detail above, the Secure Odometer Disclosure form does not require disclosure of the transferee's address. Arizona offers no explanation for this omission, which could make tracing and prosecuting fraud more difficult.³⁸

Arizona's proposed use of a Secure Odometer Disclosure form could also result in an inadequate paper trail when used for the initial transfer (the transfer of a vehicle to a dealer). One section of the form includes spaces for Seller/Dealership Name (printed), Dealer Number, Street Address, City, State, Zip, Agent Name, and Seller/Agent Signature. When the seller is not a dealer, it is unclear which party should complete this section. If the transferee dealer's agent fills in this section of the form, there would be no

³⁷ A further concern is that a scan could be digitally altered. This issue is discussed in further detail below, with respect to Project Two. Unlike other petitions approved by NHTSA, under Arizona's proposal, only one party involved in the vehicle transfer would transmit information regarding the odometer disclosure to the State. See 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935.

³⁸ Contrary to Arizona's representation that its proposals are in compliance with Federal odometer regulations, a Secure Odometer Disclosure form would not require disclosure of a transferee's current address, as required by 49 CFR 580.5(c)(4), and vehicle model, as required by 49 CFR 580.5(c)(5). We also note that, based on the completed example form provided by Arizona, the date of transfer is not disclosed, as is required by 49 CFR 580.5(c)(2). Although the form does appear to include a space for sale date, the completed example indicates AZ (i.e. sale state) in that space. The Secure Odometer Disclosure form also does not explicitly warn a customer not to rely on the odometer reading if the odometer disclosure is marked to indicate that it does not reflect the actual mileage of the vehicle, as required by 49 CFR 580.5(e)(3). The form does include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage, as is also required by 49 CFR 580.5(e)(3).

spaces on the form for the transferor to disclose his or her name and address. There also would be no space for the transferor to sign, which is of crucial importance since the transferor must certify the odometer disclosure. Even if the dealer completed only the “Buyer” portions of the form, the form appears inadequate. Since there are only spaces for Buyer Name and Buyer Signature, the form may lack either the dealership name or name of the dealer’s agent who completed the form.

NHTSA has also initially determined that Project One does not satisfy the general purpose of TIMA, of protecting consumers by ensuring that they receive valid representations of the vehicle’s actual mileage at the time of transfer based on odometer disclosures. First, Arizona’s proposed Project One relies on odometer disclosures made on Secure Odometer Disclosure forms, which is problematic, as is described above, because a person can create and submit a fraudulent form, and because ADOT has no means to verify whether a submitted form is authentic. If a fraudulent Secure Odometer Disclosure form was submitted to ADOT, it would lead to subsequent owners of a vehicle receiving inaccurate representations of the vehicle’s actual mileage. Second, Arizona’s proposal apparently would require a dealer make two separate disclosures (one on the title, and another on a Secure Odometer Disclosure form) at the time it resells the vehicle. This creates the potential that a buyer would receive inconsistent odometer disclosures.

2. Project Two

NHTSA has initially determined that Arizona’s proposed Project Two would not satisfy the first purpose of TIMA, to ensure that the form of the odometer disclosure precludes odometer fraud. As discussed above, TIMA addressed the potential for fraud

by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Project Two is inconsistent with this purpose because it proposes the use of a Secure Odometer Disclosure form, separate from the vehicle's title, to make an odometer disclosure. As discussed with Project One, an unscrupulous person could create and submit a fraudulent form to ADOT.

NHTSA has also initially determined that Project Two does not satisfy the second purpose of TIMA, to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. As described above, it appears from Arizona's petition that a dealer would make an odometer disclosure both on the vehicle's title and on a Secure Odometer Disclosure form at the time it resells the vehicle.³⁹ The dealer would electronically submit both documents to ADOT for purposes of obtaining a new title for the vehicle's purchaser. Since it is not clear which odometer disclosure (if any) ADOT would consider valid in the event the two disclosures were inconsistent, there is the potential that an odometer disclosure on the title would not be considered the required element for the title issued by the State.⁴⁰

It is NHTSA's initial determination that Project Two also does not satisfy the third purpose of TIMA, to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Project Two proposes using Secure Odometer Disclosure forms to make odometer disclosures, but such forms are susceptible to

³⁹ Arizona does not explain why two separate odometer disclosures would be made for the purpose of a single transaction.

⁴⁰ The petition states that a Motor Vehicle Certified Processor (which we understand to be a person, rather than an automated program) makes a visual comparison between the record for the vehicle, Secure Odometer Disclosure, and other documents submitted. The petition does not specify the process if a discrepancy in the documents is found.

substitutions, alterations, and/or forgery, as discussed above with respect to Project One. In addition, Project Two specifies that a dealer would submit scans of a paper title to ADOT in support of a new buyer's application for a title. The original paper title would not be sent to the State; the dealer would retain it. A sophisticated person may be able to submit to ADOT a scanned image that does not state the authentic disclosed mileage. The petition addresses some technical requirements for scanning and transmitting documents, but does not specifically address security measures that would prevent tampering or allow detection of a scanned image that contains an alteration.

NHTSA has also initially determined that Project Two does not satisfy the fourth purpose of TIMA, to create a record of the mileage on vehicles and a paper trail. As discussed above with respect to Project One, the use of a Secure Odometer Disclosure form to make an odometer disclosure would not create records and a paper trail consistent with this purpose of TIMA because it is separate from the vehicle's title, there is the potential for a person to create and submit a fraudulent form, and ADOT has no means of ensuring that a form submitted is an authentic form signed by both parties. Additionally, Project Two relies on dealers to submit scans of documents to ADOT. As discussed above, such scans are susceptible to alterations. The information disclosed in a Secure Odometer Disclosure form also creates an inadequate paper trail, as addressed by our discussion of Project One above. Specifically, the form does not include space for the transferee's address, or adequate space for disclosure of the name of a dealership and its agent's name in the case of a buyer that is a dealer.

NHTSA has initially determined that Project Two also does not satisfy the general purpose of TIMA, to protect consumers by ensuring that they receive valid

representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. NHTSA's rationale regarding this general purpose is the same as discussed above with respect to Project One. Specifically, a fraudulent Secure Odometer Disclosure form may be submitted to ADOT, which has no means to verify the authenticity of the form. Additionally, Project Two involves scans of titles, which are susceptible to alterations, as described above. If a fraudulent disclosure was submitted to ADOT, subsequent owners would receive inaccurate representations of the vehicle's actual mileage. Like Project One, Project Two also creates the potential for inconsistent odometer disclosures because of the apparent requirement that a dealer make an odometer disclosure both on a paper title and a Secure Odometer Disclosure at the time it resells the vehicle.

V. NHTSA's Initial Determination

For the foregoing reasons, NHTSA preliminarily denies Arizona's petition regarding proposed alternate disclosure requirements.

This is not a final agency action. NHTSA invites comments within the scope of this notice from the public, including Arizona.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (see 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise

fashion. However, you may attach necessary additional documents to your comments.

There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at <http://dms.dot.gov>. Click on “Help & Information,” or “Help/Info” to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read The Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>, and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: August 14, 2012

O. Kevin Vincent
Chief Counsel

Billing Code 4910-59P
(Signature page for Part 580; Initial Determination)

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